

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NEW CENTURY MORTGAGE  
CORPORATION,

Plaintiff,

v.

GREAT NORTHERN INSURANCE  
COMPANY, FEDERAL INSURANCE  
COMPANY,

Defendants.

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) CASE NO. 05C2370

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) Judge Coar

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) **MOTION OF PLAINTIFF NEW**  
) **CENTURY MORTGAGE**  
) **CORPORATION FOR SUMMARY**  
) **JUDGMENT RE DEFENDANTS**  
) **GREAT NORTHERN INSURANCE**  
) **COMPANY AND FEDERAL**  
) **INSURANCE COMPANY'S DUTY TO**  
) **REIMBURSE SETTLEMENT**

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)

**NOW COMES** the Plaintiff, New Century Mortgage Corporation (hereafter “NCMC”) by its attorneys local counsel and Gauntlett & Associates, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, hereby seeks summary judgment against Defendants Great Northern Insurance Company (“Great Northern”) and Federal Insurance Company (“Federal”)<sup>1</sup> of the duty owed by Defendants Chubb to reimburse NCMC for its settlement in *Paul Bernstein v. New Century Mortgage Corporation*, Civil Action No. 02CH 06907 (the “*Bernstein Action*”).

The grounds for the motion are:

(1) Chubb conceded in writing, in January 2004, that it owed a duty to defend the *Bernstein Action*.

(2) The *Bernstein* Complaint alleges claims for violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) and the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”).

(3) The allegations of the Bernstein complaint trigger both the “property damage” coverage for “loss of use,” and “advertising injury” coverage for the offense of “violation of rights of privacy” as a number of courts have found, triggering a defense obligation.

(4) Chubb admittedly had a duty to defend the *Bernstein Action*, including as of the date of settlement.

(5) Chubb conceded through its counsel that a settlement of less than \$6 million would be reasonable, and the amount of the settlement, \$1.95 million, was well below this amount.

(6) Chubb refused to pay any portion of the settlement, to participate in the settlement negotiations, or to pay the settlement amount when settlement was negotiated or thereafter.

(7) NCMC agreed to the settlement to avoid damages exposure, which arose from covered claims for the “advertising injury” offense of “violation of rights of privacy” and/or “property damage,” for statutory damages of \$500.00 per each facsimile which created damage exposure in excess of \$300 million, so that in light of the potential exposure the sum agreed was eminently reasonable.

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<sup>1</sup>Great Northern and Federal are collectively referred to as “Chubb” since they are members of the Chubb Group of Insurance Companies and communicated with NCMC on Chubb letterhead.

As a result, Chubb is obligated to reimburse NCMC for the entire \$1.95 million settlement of the Bernstein Action.

This Motion is based on Federal Rules of Civil Procedure, Rule 56, this Motion, Notice of Motion; Plaintiff's Points & Authorities in Support of Plaintiff's Motion for Summary Judgment; Plaintiff's L.R. 56.1(a)(3) Statement of Undisputed Facts; Declaration of James A. Lowe; Declaration of Monika McCarthy; Appendix of Exhibits; and upon such other matters as may be presented to the Court at the time of hearing.

Dated: September 28, 2005

NEW CENTURY MORTGAGE CORPORATION

By: s/Bart T. Murphy  
One of Their Attorneys

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